

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, June 22, 2005, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Tarmann
Walter Schmidt

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Mary E. Finet

OTHERS PRESENT: Town of Merton Board of Adjustment
Chris and Emily Jones, BA05:042, petitioners
Steven and Mary Schafer, BA05:043, petitioners
Robert and Ann LeDuc, BA05:035, petitioners
James and Teresa Remondino, BA05:037, petitioners
Jeff and Maria Kucharski, BA05:037, neighbors
Herman Fillinger, Jr., BA05:023, petitioner
Peggy Pelikan, BA05:023, Planning & Zoning Division Staff
Mark Stirmel

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I move to approve the Summary of the Meeting of June 8, 2005.*

The motion was seconded by Mr. Tarmann. Following a discussion, Mr. Bartholomew amended his motion as follows:

Mr. Bartholomew *I move to approve the Summary of the Meeting of June 8, 2005, with the following corrections:*

BA05:036 Dan Maloney (Page 4) - The motion shall be changed to read: "I move to deny the request, as recommended in the Staff Report, for the reasons set forth in the Staff Report."

BA05:030 Scott Susek (Page 6) - The Summary of the Meeting should be changed to reflect that the motion was approved with four yes votes and that Mr. Tarmann voted no.

The amended motion was seconded by Mr. Tarmann and approved with four yes votes. Mr. Schultz was not present for the vote.

Note: Although approval of the Summary of the Meeting of May 25, 2005, was noted on the agenda, the Summary of the Meeting of May 25, 2005, was already approved, with corrections, at the Board of Adjustment meeting on June 8, 2005. Therefore, no action was taken at this meeting regarding the approval of the Summary of the Meeting of May 25, 2005.

NEW BUSINESS:

BA05:041 ROGER AND BETTY TREMAINE

This request was for variances from Section 3.04 (1) Site Regulations - Accessory Building on a Parcel without a Residence and Section 3.08 (1) (I) Floodplain/Wetland Setback of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a 36 ft. x 68 ft. pole barn on a parcel without a residence. The Site Regulations do not permit an accessory building on a parcel without a residence, with the exception that a farm building can be permitted on a parcel without a residence, as long as the land is used principally for agricultural pursuits and the parcel is at least thirty-five acres, with approval from the Town Plan Commission and the Waukesha County Park and Planning Commission. The parcel on which the pole barn is proposed is used principally for agricultural purposes and is over thirty-five acres. At their meeting of May 16, 2005, the Town of Oconomowoc Plan Commission approved the construction of a pole barn on the parcel without a residence, subject to the owners filing a Declaration of Restrictions prohibiting the subject parcel from being sold separately from the parcel on the south side of the Mapleton Rd., which is also owned by the Tremaines and which does contain a residence. At their meeting of June 16, 2005, the Waukesha County Park and Planning Commission also approved the construction of a pole building on the parcel without a residence, subject to the filing of a Declaration of Restrictions, as required by the Town of Oconomowoc Plan Commission, and subject to any necessary variances being granted by the Waukesha County Board of Adjustment. Prior to the public hearing, the Planning and Zoning Division staff re-evaluated the estimated 100-year flood elevation of the Ashippun River as it crosses the Tremaine property and determined that the requested floodplain/wetland setback variance for a proposed pole barn is not required. Therefore, no variances are necessary to construct the proposed pole barn and the public hearing regarding this request was cancelled.

BA05:042 CHRIS AND EMILY JONES

Mr. Bartholomew

I make a motion to approve the request in accordance with the staff's recommendation, as stated in Staff Report, with the conditions recommended in the Staff Report.

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed addition, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

2. The proposed addition shall not extend more than 20 ft. towards the road from the north side of the residence, as measured to the outer edge of the wall, and the overhang on the road side of the addition shall not exceed two (2) ft. in width.
3. Prior to the issuance of a Zoning Permit, a Plat of Survey showing all existing structures and the staked-out location of the proposed addition, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
4. A detailed cost estimate must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The Planning and Zoning Division staff believes it would be unnecessarily burdensome to require the proposed addition to conform with the road setback requirement and that conformance with the road setback requirement would result in an aesthetically unappealing, long and narrow residence. Approval of the requested road setback variance will allow the proposed addition to be located in an area that will not require the removal of any trees or bushes and it will allow one of the two doors on the road side of the residence to be relocated to the side of the addition, resulting in a more aesthetically appealing facade for the residence. The proposed addition will be approximately 43 ft. from the paved roadway; therefore, the approval of the requested road setback variance will not result in a safety hazard and is not contrary to the public interest. Finally, the addition will bring the residence into conformance with the minimum required house size. Therefore, the approval of the requested road setback variance and of a variance to remodel a non-conforming structure in excess of 50% of its fair market value, should the final cost estimate result in the need for such a variance, is in conformance with the purpose and intent of the Ordinance.

BA05:043 STEVEN SCHAFER

Mr. Tarmann

I move to approve the request, with the following conditions:

1. *The pole barn must be set back as far as possible from the edge of the access easement while still meeting the minimum required separation distance from the septic system. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed pole barn, in conformance with the this condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.*
2. *The height of the pole barn shall be reduced as much as possible while still providing a door height that will accommodate the petitioner's truck. The petitioner shall investigate other possible*

designs and roof lines for the pole barn and present evidence to the Planning and Zoning Division staff that the proposed design has the lowest roof height that will provide a door high enough to accommodate his truck.

3. *The pole barn shall be no larger than requested.*

The reasons for this approval are as follows:

The proposed site is more in conformance with the purpose and intent of the Ordinance since it will provide a greater separation from the commercial building to the adjacent residential use to the east.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for denial.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owners from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Although the owner may prefer to locate the new pole barn in the proposed location, there is a conforming location for the pole barn that will meet all locational requirements of the Ordinance, even with the additional setback from the access easement and the additional offset that are required to permit the proposed height of the pole barn, and denial of the requested variances will not prevent the use of the property for a permitted purpose and will not be unnecessarily burdensome. Therefore, the approval of this request would not be in conformance with the purpose and intent of the Ordinance.

BA05:035 ANN AND ROBERT LE DUC

Mr. Schmidt

I move to approve the request in accordance with the conditions set forth in the Staff Report and for the reasons set forth in the Staff Report, with the exception that Condition No. 10 shall be changed to read as follows: "The existing non-conforming "lean-to" addition attached to the storage shed must be removed from the property no later than six (6) months after the issuance of a Zoning Permit for a detached garage."

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. In order to maximize the shore setback of the garage, it must be located between 12.66 ft. and 16 ft. from the southeast lot line, as measured to the outer edge of the wall. If it can be shown that such a location would interfere with the tree line or the area of steep slope along the southeast lot

line, the garage may be located as far as 20 ft. from the southeast line, but in no case shall the garage be located less than 50 ft. from the pond. Note: If the Town of Merton Board of Adjustment does not grant an offset variance for the proposed garage, it will be required to be at least 15.83 ft. from the southeast lot line, as measured to the outer edge of the wall.

2. The garage must be located at least 10 ft. from the residence, as measured to the outer edges of the walls.
3. As measured to the outer edges of the walls, the depth of the garage shall not exceed 22 ft. and the width of the garage shall not exceed 32 ft.
4. The overhangs of the garage shall not exceed two (2) ft. in width.
5. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.
6. Prior to the issuance of a Zoning Permit, a complete set of plans for the garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
7. Prior to the issuance of a Zoning Permit, a Plat of Survey showing all existing structures and the staked-out location of the proposed garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
8. If the Plat of Survey required in Condition No. 7 demonstrates that compliance with the conditions set forth above will result in a detached garage less than 20 ft. deep, this matter may be brought back to the Board of Adjustment for reconsideration as "Old Business", without payment of an additional fee.
9. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure that the construction of the garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the pond, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.
10. The existing non-conforming storage shed and attached "lean-to" addition must be removed from the property no later than six (6) months after the issuance of a Zoning Permit for a detached garage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Conformance with the 75 ft. shore setback requirement would not permit the construction of even a small two-car garage. The Planning and Zoning Division staff believes this would be unnecessarily burdensome, especially since the residence does not have a basement and is almost 400 sq. ft. less than the minimum required house size. The approval of this request, with the recommended conditions, will allow the construction of a detached garage large enough to compensate for the lack of a basement in the residence, in a location that will not adversely affect the neighboring properties or the small, unnamed pond. Finally, the approval of this request, with the recommended conditions, will maximize the shore setback, which is in the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA05:037 JAMES AND TERESA REMONDINO

Mr. Schmidt

I move to adopt the staff's recommendation, as stated in the Staff Report, with the conditions set forth in the Staff Report and for the reasons set forth in the Staff Report.

The motion was seconded by Mr. Tarmann. Following a discussion, Mr. Schmidt amended his motion as follows:

Mr. Schmidt

I amend my motion to adopt the staff's recommendation, as stated in the Staff Report, with the conditions set forth in the Staff Report and for the reasons set forth in the Staff Report, with the addition of a Condition No. 10 to read "If the Plat of Survey required in Condition No. 7 demonstrates that compliance with the conditions set forth above will result in a detached garage less than 20 ft. wide, this matter may be brought back to the Board of Adjustment for reconsideration as "Old Business", without payment of an additional fee."

The amended motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for denial of the requested variances from the offset, floodplain setback, floor area ratio, open space, and accessory building height requirements and of the requested special exception from the accessory building floor area ratio requirement, to permit the construction of a detached garage on the foundation of the existing garage/cottage, but for approval of variances from the offset, floodplain setback, floor area ratio, open space, and accessory building height requirements and of a special exception from the accessory building floor area ratio requirement, to permit the construction of a new detached garage, subject to the following conditions:

1. The new garage must be located at least 10 ft. from the north lot line, at least 10 ft. from the residence and from the deck on the lake side of the residence, at least 50 ft. from the 100-year flood elevation of 960 ft. above mean sea level, and at least 35 ft. from the edge of the road right-of-way, as measured to the outer edges of the walls, with overhangs not to exceed two (2) ft. in width, as shown on Exhibit "F" of the Staff Report.
2. The garage must contain only one story, as viewed from the road, but it may have an exposed lower level on the lake side. The garage may not have a bathroom and the exposed lower level must be used for storage only.
3. The footprint of the garage may not exceed 588 sq. ft.
4. The height of the garage, as measured from the lowest exposed point of the structure on the road side to the peak of the roof, must not exceed 18 ft.
5. The garage must be constructed without the addition of any new retaining walls.
6. Prior to the issuance of a Zoning Permit, a complete set of plans for the garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
7. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out location of the new garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
8. In order to ensure the construction of the new garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the Plat of Survey required in Condition No. 7.
9. A "preliminary site evaluation" of the proposed garage and the septic system must be conducted by the Environmental Health Division. Prior to the issuance of a Zoning Permit, evidence must be submitted to the Planning and Zoning Division staff that the Environmental Health Division has no objection to the proposed garage, and that it meets all required minimum separation distances and would not have an adverse effect on the operation of the private waste disposal system. If that cannot be done, a Sanitary Permit for a new waste disposal system must be issued, and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where

compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Hardships exist with respect to the open space and floor area ratio requirements because of the size of the lot. Given that the lot area is only 14,425 sq. ft., it is impossible to conform with the 15,000 sq. ft. minimum open space requirement. Further, since the residence has a floor area of 2,171 sq. ft. and the maximum permitted floor area ratio of 15% would allow a total floor area of only 2,164 sq. ft., no garage can be constructed on the property without a floor area ratio variance. Conformance with the minimum required offset of 12.5 ft. from the north lot line and the minimum required floodplain setback of 75 ft., would allow a detached garage only approximately 15 ft. wide, which would be unnecessarily burdensome.

Although the size and configuration of the lot, the location of the existing residence, and the steep slopes create hardships when attempting to locate a garage on the property, the Planning and Zoning Division staff believes that, given the close proximity of the residence on the adjacent lot to the north, it would not be in conformance with the purpose and intent of the Ordinance to permit the garage to be rebuilt on the existing foundation, as proposed. The approval of variances and a special exception to permit the construction of a new detached garage, in a more conforming location, as recommended, is not unnecessarily burdensome, as it will permit the construction of a two-car garage, at least 20 ft. wide, in a location that conforms with the required 10 ft. offset between a residence and an accessory building.

Locating the new garage at least 50 ft. from the 100-year floodplain, as recommended, will permit a larger building envelope, but will not adversely affect the lake. Locating the new garage at least 35 ft. from the road right-of-way, as recommended, will provide adequate off-street parking and provide safe ingress and egress from the driveway. The proposed garage conforms with the height requirement on the road side and is only non-conforming with respect to the height requirement because of the exposed lower level on the lake side, which is necessary due to the topography of the lot. Finally, since the existing slopes require an exposed foundation on the lake side, it is felt that it is appropriate to allow the exposed lower level of the garage to be utilized for additional storage, even though such a lower level storage area increases the floor area. Therefore, the approval of variances from the offset, floodplain setback, floor area ratio, open space, and accessory building height requirements and of a special exception from the accessory building floor area ratio requirement, to permit the construction of a new detached garage, with the recommended conditions, would be in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA05:023 HERMAN A. FILLINGER JR

Mr. Tarmann

I move to approve the request in accordance with the conditions and reasons set forth in the Staff Memorandum dated June 22, 2005.

The motion was seconded by Mr. Schmidt and carried unanimously.

The staff's recommendation, as set forth in the Staff Memorandum dated June 22, 2005, was for denial of the request to replace the existing retaining wall on the northeast side of the residence,

which was not part of the original proposal, and approval of the request for a variance from the shore and floodplain setback requirements of the Ordinance for the replacement of the existing patio, stairs, and two retaining walls on the south side of the residence, with the following condition:

1. A revised Landscaping Plan, which shows vegetation that will adequately screen the 48-inch retaining wall, as viewed from the lake, shall be submitted to the Planning and Zoning Division Staff for review and approval prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

The replacement of the retaining wall on the northeast side of the residence was not part of the original proposal and therefore was not discussed at the Public Hearing. This retaining wall could be removed and the area re-graded; it is the opinion of the Planning and Zoning Division Staff that this wall is not necessary.

The existing patio, retaining walls and stairs on the south side of the residence are in disrepair. The Waukesha County Land Resources Division previously indicated that the retaining walls on the south side of the residence may be removed and the area re-graded. However, due to the location of the doorway to the residence, an area for ingress and egress to the residence is necessary. The existing retaining wall is necessary to retain this area. Furthermore, as conditioned, this retaining wall will be screened from view from the lake. The proposed deck is no larger in total dimensions than the existing patio. Therefore, the approval of this request is in conformance with the purpose and intent of the Ordinance.

ADJOURNMENT:

Mr. Schmidt *I make a motion to adjourn this meeting at 8:50 p.m.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Respectfully submitted,

Mary E. Finet
Secretary, Board of Adjustment